

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
<b>STEPHEN W. LAWRENCE</b>	)	
	)	
<b>RESPONDENT</b>	)	<b>CASE NO. WPC 07-0121</b>
	)	

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control,  
and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the "division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

**II.**

Stephen W. Lawrence, (hereinafter the "Respondent") owns property on Baker Road that adjoins Piney Creek (hereinafter the "site") in Grundy County, Tennessee.

Service of process may be made on the Respondent at 1041 Hillcrest Road, in Hixson, Tennessee 37343.

## **JURISDICTION**

### **III.**

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3–4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

### **IV.**

The Respondent is a "person" as defined by T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

## V.

Piney Creek and its tributaries, referred to herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” this water body has been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

## VI.

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI).

## VII.

Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (hereinafter the “ARAP”) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

## **FACTS**

### **VIII.**

On March 15, 2007, division personnel conducted an inspection at the site. It was noted that land disturbance activities in excess of 1 acre were being performed at the site, including land clearing and the construction of roads. Erosion Prevention and Sediment Control (EPSC) measures were deemed to be vastly inadequate, and multiple areas disturbed by construction activity were observed to be unstable, primarily the slopes adjacent to the road cuts. Significant gullies had formed in these slopes, caused by erosion resulting from the lack of adequate control measures. Hay bales had been placed in a few of the gullies, but these were not effective in preventing further erosion.

It was also observed that culverts had been installed at stream crossings in 5 different locations and that the banks of each crossing were unstable and had been eroding into the stream channel. Extensive amounts of sediment had been deposited into the stream channel in multiple locations. Headwalls, rip-rap, or other types of protection had not been installed at any of the culverts. At other areas, silt fencing had been installed directly across the stream channels. It was also noted that an impoundment had been constructed on an unnamed tributary to Piney Creek. The dam had several acres of water impounded behind it. Iron-laden seepage with an unpleasant odor was seeping from a valve structure at the base of the dam, indicating that the chemical properties of the stream water had been negatively impacted by the construction of the dam and the resulting impoundment.

A subsequent file review revealed that an ARAP application requesting approval to perform these aquatic resource alterations had not been submitted to the division, nor had a

completed NOI been submitted to obtain coverage under the TNCGP for the land clearing activities.

## **IX.**

On March 26, 2007, a Notice of Violation (NOV) was issued to the Respondent detailing the violations observed during the March 15, 2007, inspection. The NOV instructed the Respondent to perform specific corrective actions by April 10, 2007, and to submit construction documentation regarding the culverts and dam. The NOV also instructed the Respondent to submit a stream restoration and sediment removal plan for review and approval, and to submit a NOI to obtain TNCGP coverage for the site. The corrective actions included the installation of check dams in the drainage channels along the road cuts, stabilization of disturbed soils, and the installation of protective measures such as headwalls and rip-rap at each of the culverts to prevent further erosion and scouring of the stream channels.

## **X.**

On April 9, 2007, the Respondent met with division personnel to discuss the March 26, 2007, NOV. The specific violations and corrective actions that would be required were discussed, as were the timelines required in the NOV. The Respondent informed the division that he would not be able to complete the actions by the established deadlines and requested a time extension. The Respondent was instructed to submit for approval a schedule for implementing the corrective actions.

## **XI.**

On April 13, 2007, the division received a written response and a schedule of corrective actions from the Respondent's consultant. The response indicated that the sediment and erosion control measures required by the March 26, 2007, NOV were being implemented, and had been completed in some areas. The response also indicated that the required construction documents would be submitted once the stabilization and other corrective actions had been completed.

## **XII.**

On April 11, 2007, a site investigation was conducted by the Division of Water Supply, Safe Dams Program, to assess the dam constructed on Piney Creek to determine if it would have to be regulated under the Safe Dams Act. It was determined that the dam was large enough to be considered a dam under that Act, and that based on the size and usage of the lake created by the dam it would indeed be regulated under the Safe Dams Act. It was also determined that the dam was in violation of that Act, and the Rules and Regulations applied to the Act.

## **XIII.**

On April 25, 2007, a NOV was issued to the Respondent by the Division of Water Supply, Safe Dams Program. The NOV informed the Respondent of the Safe Dams Program's determination, and also that the dam was in violation of the Safe Dams Act because it had been constructed without a required Certificate of Approval.

#### **XIV.**

On May 3, 2007, division personnel met with the Respondent at the site to assess the status of corrective actions being implemented. The disturbed areas along the road cut had been seeded and check dams had been installed in the roadside ditches. The check dams were effectively trapping sediment, but some were in need of maintenance and repair. Rip-rap had been placed around the culverts and erosion control fabric had been installed on the steeper portions of the roadside slopes.

#### **XV.**

On May 31, 2007, the division issued correspondence to the respondent addressing the remaining items required by the March 26, 2007, NOV. The division informed the respondent that the requirement to obtain TNCGP coverage could be waived if a written statement assuring that no further land disturbance activity would be performed. The construction documentation demonstrating the length and size of each culvert installed in the stream channel, the required stream restoration and sediment removal plan, and construction documentation pertaining to the dam and resulting lake had not yet been submitted to the division as had been required, and a new deadline of June 14, 2007, was allowed for the completion of these requirements.

#### **XVI.**

On June 8, 2007, the Respondent replied to the May 31, 2007, correspondence, and stated that the remaining documents would be submitted by the new deadline, with the exception of the dam construction plans. The Respondent further explained that his engineer had been coordinating with the Division of Water Supply's Safe Dam Program on

that issue, and they had previously established a deadline of September 15, 2007, for the completion of those documents. The Respondent explained that the engineering firm preparing the dam documentation would not have it completed before that date. The Respondent also informed the division that he would provide a written statement assuring that no further land disturbance activity would be performed, in order to waive the requirement to obtain TNCGP coverage for the site.

#### **XVII.**

On June 15, 2007, the division received the written statement from the Respondent assuring that no further land disturbance would take place at the site. The statement further assured that if any activity were to be planned in the future, that appropriate permit coverage would be obtained.

#### **XVIII.**

On July 23, 2007, division personnel conducted a follow-up inspection at the site to document current site conditions. The previously disturbed areas that had been seeded demonstrated significantly more grass growing than observed on previous visits, but some areas were still sparsely vegetated. The check dams alongside the road cut had been repaired, but it was observed that in some areas the check dams were in need of minor maintenance to ensure that they continued to function properly. A small amount of sediment had been removed from the stream channels in front of the culverts, but significant deposits of sediment remained in two of the drainages, indicating that additional removal and stream stabilization needed to be performed. In the area of the impoundment, it was observed that only a small flow of water was exiting the impoundment and entering



the stream channel below the dam. This small flow was not entering the channel from the outflow valve structure of the dam, but was seeping through the dam in at least two locations. The stream channel was coated in iron floc and as a result was a distinct orange color. The iron floc in the channel was more prevalent than that observed during the previous site visit.

#### **XIX.**

During the course of investigating this matter the division incurred damages totaling FIVE HUNDRED SIXTY-FOUR DOLLARS AND SEVENTY-SEVEN CENTS (\$564.77).

#### **VIOLATIONS**

#### **XX.**

By altering waters of the state without authorization under an ARAP, and by performing construction activities without coverage under the TNCGP, the Respondent has violated T.C.A. §§ 69-3-108(a)–(b), 114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;
- (6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

**XXI.**

By causing a condition of pollution to Piney Creek, the Respondent has violated T.C.A. § 69-3-114(a).

§ 69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where

such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

## **ORDER AND ASSESSMENT**

### **XXII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115–16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondent:

1. The Respondent shall implement appropriate EPSC measures to assure that no eroded material leaves the site and enters waters of the state. Documentation that EPSC measures have been implemented is to be sent within 15 days of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the Chattanooga Environmental Field Office (CH-EFO), Suite 550–State Office Building, 540 McCallie Avenue, Chattanooga, Tennessee 37402. A copy shall also be sent to the manager of the Enforcement & Compliance Section, Division of Water Pollution Control, located at 401 Church Street, 6th Floor L&C Annex, Nashville, TN 37243.
2. The Respondent shall maintain appropriate EPSC measures to assure that no additional material leaves the site and enters waters of the state. The EPSC measures shall be maintained until permanent erosion preventive vegetative cover is established.

3. Within 30 days of receipt of this Order the Respondent shall submit a corrective action plan (CAP) designed by a licensed professional engineer, landscape architect, or other competent professional to restore the affected stream segments and remove appropriate sediment accumulations from the impacted portions of the stream. The plan shall include, but not be limited to, the manual methods to be used during sediment removal activities and a schedule of implementation for the proposed activities. The plan shall also specifically address the de-watering of the impoundment and the removal of the unauthorized dam. The CAP is to be submitted to the manager of the Division of Water Pollution Control located at the CH-EFO and a copy shall also be sent to the manager of the Division of Water Pollution Control's Enforcement & Compliance Section at the addresses listed in Item 1, above.
4. Within 90 days of approval of the CAP, the Respondent shall complete implementation of the CAP and submit written documentation of completion to the Manager of the Division of Water Pollution Control located at the CH-EFO, and a copy shall also be sent to the manager of the Enforcement & Compliance Section, at the addresses listed in Item 1, above.
5. The Respondent is hereby assessed a CIVIL PENALTY in the amount of THIRTY FIVE THOUSAND DOLLARS (\$35,000.00), payable as follows:
  1. The Respondent shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division SIX THOUSAND FIVE HUNDRED DOLLARS (\$6,500.00).

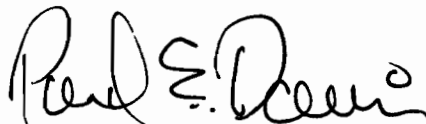
2. The Respondent shall pay SIX THOUSAND DOLLARS (\$6,000.00) to the division in the event the Respondent fails to comply with Item 1 above, to be paid within 30 days of default.
3. The Respondent shall pay SIX THOUSAND DOLLARS (\$6,000.00) to the division in the event the Respondent fails to comply with Item 2 above, to be paid within 30 days of default.
4. The Respondent shall pay EIGHT THOUSAND TWO HUNDRED FIFTY DOLLARS (\$8,250.00) to the division in the event the Respondent fails to comply with Item 3 above, to be paid within 30 days of default.
5. The Respondent shall pay EIGHT THOUSAND TWO HUNDRED FIFTY DOLLARS (\$8,250.00) to the division in the event the Respondent fails to comply with Item 4 above, to be paid within 30 days of default.
6. The Respondent shall pay to the division DAMAGES in the amount of FIVE HUNDRED SIXTY-FOUR DOLLARS AND SEVENTY-SEVEN CENTS (\$564.77) within thirty (30) days of receipt of this Order.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on this \_\_\_\_\_ day of August, 2007.

A handwritten signature in black ink, appearing to read "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS, P.E.  
Director, Division of Water Pollution Control

## **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel

representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payments of the civil penalty shall be made payable to the “Treasurer, State of Tennessee,” and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution and Control, Tennessee Department of Environment and Conservation, 6<sup>th</sup> Floor L & C Annex, 401 Church Street, Nashville, TN 37243. Please write your case number on all payments and all correspondence concerning this matter.